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U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
October 2007 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

PATRICK ANTHONY MCGOWAN,  
CHARLES ROBERT VANCE,  
SCOTT DREW,  
RANDALL PAUL KRUSKA, and  
KAREN MONTOYA,

Defendants.

) CR No. 08- **CR08-01116**  
)  
) **I N D I C T M E N T**  
)  
) [18 U.S.C. § 371: Conspiracy;  
) 42 U.S.C. § 408(a)(7)(B): False  
) Representation Of Social  
) Security Number; 18 U.S.C.  
) § 1028(a)(7): Identity Fraud;  
) 18 U.S.C. § 1001(a)(1), (2):  
) Falsification And Concealment  
) Of Material Facts Within  
) Federal Agency Jurisdiction;  
) 18 U.S.C. § 2: Aiding And  
) Abetting And Causing An Act To  
) Be Done]  
)  
)  
)

The Grand Jury charges:

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SAC:sac

COUNT ONE

[18 U.S.C. § 371]

I.

INTRODUCTORY ALLEGATIONS

A. THE DEFENDANTS AND THEIR EMPLOYER

1. During the time relevant to this Indictment:

a. Ralphs Grocery Company ("Ralphs") was an Ohio corporation headquartered in Compton, California, whose principal business was operating supermarkets in California under the "Ralphs" and "Food 4 Less" banners. Ralphs was indirectly owned and controlled by The Kroger Co. ("Kroger"), a publicly-traded Ohio corporation headquartered in Cincinnati, Ohio, which operated grocery and retail stores throughout the United States.

b. Ralphs operated approximately 300 supermarkets in Southern California.

c. Ralphs' principal competitors in Southern California were Albertsons, Inc. ("Albertsons") and Vons, a Safeway Company ("Vons"), which included Vons supermarkets operated under the "Pavilions" banner.

d. Ralphs employed approximately 19,000 grocery clerks and meat cutters (collectively, "grocery workers") to staff its Southern California stores. Almost all of these employees were members of one of seven local unions of the United Food and Commercial Workers Union, AFL-CIO-CLC (collectively, the "Unions"; individually, the "Union").

e. Ralphs stores were grouped into Zones, each of which was headed by a Zone Manager. Each Zone consisted of between approximately 18 to 20 stores. Each Ralphs store was

1 managed by a Store Director, who reported to his or her Zone  
2 Manager, and was assisted in most instances by a Manager of  
3 Operations. Zone Managers, Store Directors, and Managers of  
4 Operations were non-union employees.

5 f. Zones were grouped into one of three Divisions:  
6 Southern, Central, and Northern. Each Division was headed by a  
7 Group Vice-President. Zone Managers reported to their respective  
8 Group Vice-President. The three Group Vice-Presidents reported  
9 to the Executive Vice President for Store Operations, who, in  
10 turn, reported to the President of Ralphs.

11 2. Defendant PATRICK ANTHONY MCGOWAN (hereinafter  
12 "MCGOWAN") began his employment at Ralphs in 1975. MCGOWAN  
13 subsequently held several different positions, including Store  
14 Director and Zone Manager (formerly known as a "District  
15 Manager"). MCGOWAN became a Group Vice President for Ralphs in  
16 2000. In March 2003, MCGOWAN became the Group Vice President,  
17 Southern Division, at Ralphs. As Group Vice-President, Southern  
18 Division, MCGOWAN was responsible for managing the operations of  
19 approximately one hundred-twenty Ralphs grocery stores located in  
20 Los Angeles, San Bernardino, Riverside, Orange County, and San  
21 Diego counties.

22 3. Defendant CHARLES ROBERT VANCE ("VANCE") began his  
23 employment with Ralphs in 1968. VANCE subsequently held several  
24 different positions at Ralphs, including Store Director. VANCE  
25 became a Zone Manager in or about 1989. In 2003 and 2004, VANCE  
26 was the Zone Manager for Zone 3, which included twenty Ralphs  
27 stores in Riverside and San Bernardino Counties. As the Zone  
28 Manager for Zone 3, VANCE reported directly to MCGOWAN. As a

1 Zone Manager, VANCE was responsible for supervising the  
2 operations and management of the Ralphs stores in his zone.

3 4. Defendant SCOTT DREW ("DREW") began his  
4 employment with Ralphs in 1977. DREW subsequently held several  
5 different positions at Ralphs, including Store Director. DREW  
6 became a Zone Manager for Ralphs in or about 2000. In 2003 and  
7 2004, Drew was the Zone Manager for Zone 4, which included twenty  
8 Ralphs stores in the areas of West Los Angeles, Hollywood, and  
9 Malibu, within the Central Division of Ralphs. As a Zone  
10 Manager, Drew was responsible for supervising the operations and  
11 management of the Ralphs stores in his zone. In late 2005, Drew  
12 was promoted within the Kroger organization to the position of  
13 Vice President for Store Operations, Central Division, in  
14 Indianapolis, Indiana.

15 5. Defendant RANDALL PAUL KRUSKA ("KRUSKA") began his  
16 employment with Ralphs in 1972. KRUSKA subsequently held several  
17 different positions at Ralphs, including Store Director. KRUSKA  
18 became a Zone Manager for Ralphs in or about 1998. In the summer  
19 of 2003, KRUSKA became the Zone Manager for Zone 1, which  
20 included eighteen Ralphs stores in Riverside and San Diego  
21 Counties, within the Southern Division of Ralphs. As the Zone  
22 Manager for Zone 1, KRUSKA reported directly to MCGOWAN. As a  
23 Zone Manager, KRUSKA was responsible for supervising the  
24 operations and management of the Ralphs stores in his zone.

25 6. Defendant KAREN MONTTOYA ("MONTTOYA") began her  
26 employment with Alpha Beta grocery stores in or about 1976.  
27 Alpha Beta merged with Ralphs in or about 1995. Following the  
28 Alpha Beta-Ralphs merger, MONTTOYA served as a Store Director at

1 Ralphs. MONTOYA became a Zone Manager for Ralphs in or about  
2 2002. In 2003 and 2004, MONTOYA was the Zone Manager for Zone 6,  
3 which included twenty-three Ralphs stores located in Orange  
4 County, California, within the Southern Division of Ralphs. As  
5 the Zone Manager for Zone 6, MONTOYA reported directly to  
6 MCGOWAN. As a Zone Manager, MONTOYA was responsible for  
7 supervising the operations of the Ralphs stores in her zone.

8 **B. THE NATIONAL LABOR RELATIONS ACT, COLLECTIVE BARGAINING, AND**  
9 **LOCKOUTS**

10 7. The National Labor Relations Act ("NLRA") is the  
11 primary law governing relations between labor organizations (such  
12 as unions) and employers whose operations affect interstate  
13 commerce.

14 8. Section 7 of the NLRA (Title 29, United States Code,  
15 Section 157) creates in employees certain rights, including: the  
16 right to organize, to join, and to assist a labor organization;  
17 the right to bargain collectively with their employer through a  
18 representative of their own choosing; and the right to engage in  
19 concerted activities for purposes of collective bargaining and  
20 mutual aid and assistance, such as to strike and picket their  
21 employer.

22 9. The NLRA imposes on an employer and the employees'  
23 bargaining representative the mutual obligation to meet at  
24 reasonable times and confer in good faith in negotiating a  
25 written agreement regarding the wages, hours, and other terms and  
26 conditions of employment of represented employees. Such an  
27 agreement is known as a "collective bargaining agreement" and the  
28 employees covered by such an agreement are referred to as

1 "bargaining unit members."

2 10. Unions may bargain together on behalf of their  
3 respective memberships in a "multi-union bargaining unit."  
4 Employers may likewise bargain together in a "multi-employer  
5 bargaining unit." Employers in a multi-employer bargaining unit  
6 may, within certain limits, coordinate their activities for  
7 purposes of responding to a labor action or the threat of one.

8 11. During negotiations to produce a new collective  
9 bargaining agreement, and as part of its obligation to bargain in  
10 good faith, an employer may not (with limited exceptions)  
11 unilaterally change the terms and conditions of employment as  
12 specified in an expired collective bargaining agreement, unless  
13 or until an "impasse" in negotiations is declared. Before an  
14 impasse in negotiations is declared, such unilateral changes, in  
15 the absence of a legitimate business justification or exigent  
16 circumstances, constitute unfair labor practices in violation of  
17 Section 8(a)(5) of the NLRA.

18 12. A lockout is the withholding of employment by an  
19 employer from its employees, usually for the purpose of creating  
20 and maintaining economic pressure on the union and its membership  
21 to accept the employer's lawful bargaining position. A lockout,  
22 if conducted properly, is a lawful bargaining tactic that may  
23 serve as the employer's response to a threatened or actual  
24 strike.

25 13. An employer may continue to operate its business during  
26 a lockout by hiring temporary replacement workers who are not  
27 union members. An employer generally may not retain or rehire  
28 bargaining unit members to work as temporary replacement workers.

1 Retaining or rehiring bargaining unit members as temporary  
2 replacement workers, in the absence of a legitimate business  
3 justification or exigent circumstances, constitutes an unfair  
4 labor practice in violation of Sections 8(a)(1) and (a)(3) of the  
5 NLRA.

6 14. A "selective" lockout, also known as a "partial"  
7 lockout, occurs when an employer retains or rehires only some of  
8 the bargaining unit members it has locked out.

9 15. An employer that declares a total lockout of all or a  
10 defined group of bargaining unit members may not act  
11 inconsistently with that declaration and selectively retain or  
12 rehire only some of the otherwise locked-out bargaining unit  
13 members. Such inconsistent conduct, in the absence of a  
14 legitimate business justification or exigent circumstances,  
15 constitutes an unfair labor practice in violation of Sections  
16 8(a)(1) and (a)(3) of the NLRA.

17 16. An employer that selectively retains or rehires only  
18 some members of a locked-out bargaining unit during negotiations  
19 toward a new collective bargaining agreement (even if such  
20 selective retention or rehiring is otherwise proper) must adhere  
21 to most of the terms and conditions of the expired collective  
22 bargaining agreement. Unilaterally changing the terms and  
23 conditions of employment of such retained or rehired bargaining  
24 unit members, in the absence of a legitimate business  
25 justification or exigent circumstances, constitutes an unfair  
26 labor practice in violation of Sections 8(a)(1), (a)(3), and  
27 (a)(5) of the NLRA.

1 C. PRE-STRIKE NEGOTIATIONS BETWEEN RALPHS, ALBERTSONS, VONS,  
2 AND THE UNIONS TOWARD A NEW COLLECTIVE BARGAINING AGREEMENT

3 17. On or about October 5, 2003, a collective bargaining  
4 agreement (the "old collective bargaining agreement") between, on  
5 the one hand, Ralphs, Albertsons, Vons, and Stater Brothers  
6 Markets (collectively, the "Food Employers"), and, on the other  
7 hand, the Unions, was due to expire.

8 18. The old collective bargaining agreement governed the  
9 terms and conditions of employment for grocery clerks, meat  
10 cutters, and pharmacists employed by the Food Employers,  
11 including: hourly wage rates for different classifications of  
12 employees; premium pay for overtime hours and hours worked on  
13 holidays; minimum hours for part-time and full-time employees;  
14 seniority rules; vacation pay; transfers between stores and  
15 geographic areas; layoffs and reinstatement following a layoff;  
16 and discharge for cause.

17 19. During the Summer of 2003, Ralphs, Albertsons, Vons,  
18 and the Unions began negotiations toward a new collective  
19 bargaining agreement.

20 D. THE SECRET MUTUAL STRIKE ASSISTANCE AGREEMENTS

21 20. On or about September 5, 2003, Ralphs, Albertsons, and  
22 Vons (collectively, the "Three Employers") entered into two  
23 virtually identical "Mutual Strike Assistance Agreements"  
24 (collectively, the "Assistance Agreements"). The Assistance  
25 Agreements were intended to be, and were, kept secret from the  
26 Unions.

27 21. The Assistance Agreements provided for close  
28 coordination and communications between the Three Employers in



1 negotiating with the Unions and in responding to a strike against  
2 one of the Three Employers. The Assistance Agreements provided,  
3 among other things, that:

4           a. "In the event an Employer signatory to this  
5 Agreement is struck by the Unions . . . and other Employers are  
6 not struck, the signatory Employers shall, within 48 hours, lock  
7 out all employees represented by the Unions"; and

8           b. "[T]he existence of this Agreement is to remain  
9 confidential at all times and under no circumstances to be  
10 disclosed to the Union, except as required by law or legal  
11 processes."

12       22. The Assistance Agreements also provided "a mechanism  
13 for sharing certain costs of a strike or lockout among the  
14 Employers." The amount of any cost-sharing payments to be made  
15 by any of the Three Employers was to be calculated by a public  
16 accounting firm, selected by the Three Employers, pursuant to a  
17 formula specified in the Assistance Agreements. The formula  
18 adjusted revenue among the Three Employers by comparing the  
19 revenue of each of the Three Employers during the eight weeks  
20 immediately preceding a strike with their respective revenue  
21 during and shortly after the strike.

22       23. Under the Assistance Agreements, if the Unions struck  
23 one of the Three Employers, the other two were obligated to lock  
24 out their employees. To ensure that an employer did not hire  
25 striking or locked-out employees of another employer as temporary  
26 replacement workers, the Three Employers agreed to exchange  
27 identifying information regarding their respective grocery  
28 workers, so that each employer would be able to determine whether

1 or not an applicant for a temporary replacement position was  
2 actually a union member employed by one of the other employers.

3 **E. THE STRIKE/LOCKOUT**

4 24. On or about October 5, 2003, the old collective  
5 bargaining agreement expired without the Three Employers and the  
6 Unions having negotiated a new agreement.

7 25. On or about October 8, 2003, the membership of the  
8 Unions voted overwhelmingly to reject the new collective  
9 bargaining agreement proposed by the Three Employers, and  
10 authorized the Unions to call a strike if necessary.

11 26. On or about October 11, 2003, the Unions struck Vons  
12 and began picketing Vons stores.

13 27. On or about October 11, 2003, pursuant to the  
14 Assistance Agreements, Ralphs' Director of Labor Relations sent  
15 letters to the Presidents of all seven Unions advising that  
16 effective 6:00 a.m. on October 12, 2003, Ralphs Supermarkets  
17 would lock out bargaining unit members, with the exception of  
18 pharmacists. The letter further advised that bargaining unit  
19 employees would be allowed to return to work when the strike  
20 against Vons concluded.

21 28. On or about October 12, 2003, Ralphs and Albertsons, in  
22 accordance with the terms of the secret Assistance Agreements,  
23 locked-out all of their grocery clerks and meat cutters (but not  
24 pharmacists) who were members of the seven Unions. The Unions  
25 thereafter began picketing Ralphs and Albertsons stores.

26 29. Ralphs, Albertsons, and Vons all continued to operate  
27 their stores during the strike/lockout using temporary  
28 replacement workers, as well as non-union management and other

1 personnel brought in temporarily from other divisions.

2       30. On or about October 31, 2003, the Unions stopped  
3 picketing Ralphs stores, which resulted in a substantial increase  
4 in business at most Ralphs stores. Because Ralphs' senior  
5 management was not expecting the Unions to stop picketing, Ralphs  
6 was ill-prepared for the increase in business at these stores.  
7 The resulting substantial increase in business at Ralphs stores  
8 caused many legitimate temporary replacement workers to resign or  
9 simply stop going to work, thereby further aggravating the  
10 staffing needs at many Ralphs stores.

11       31. During the lockout and especially after the Unions  
12 stopped picketing Ralphs stores, Ralphs needed several hundred  
13 well-trained, experienced, and reliable grocery workers who  
14 could: (a) operate its stores by competently and efficiently  
15 performing necessary functions, such as receiving, bookkeeping,  
16 price integrity, stocking, rotating and displaying produce, and  
17 cutting and displaying meat; and (b) train and supervise  
18 temporary replacement workers to perform these functions. These  
19 temporary replacement workers were needed to avoid closing  
20 stores, or reducing store hours, for the duration of the lockout  
21 and the expected permanent loss of customers and revenue that  
22 would result from such events. Due in large part to the fact  
23 that the strike and lockout involved Ralphs and its two largest  
24 competitors in Southern California, that is, Vons/Pavillions and  
25 Albertsons, the majority of experienced grocery workers in the  
26 Southern California region were members of the striking Unions  
27 and could not be legitimately hired as temporary replacement  
28 workers at Ralphs.

1        32. On or about February 26, 2004, the Three Employers and  
2 the Unions entered into a "Labor Dispute Settlement Agreement."  
3 On or about February 28 and 29, 2004, the membership of the  
4 Unions voted to ratify the new CBA proposed by the Three  
5 Employers (the "new collective bargaining agreement"). On or  
6 about March 1, 2004, striking Vons and locked-out Ralphs and  
7 Albertsons employees began returning to work.

8        33. In the new collective bargaining agreement, Ralphs  
9 achieved all of its primary bargaining objectives, including over  
10 \$200 million in estimated wage, health care and pension cost  
11 savings.

12 **F. RALPHS' HIRING OF TEMPORARY REPLACEMENT WORKERS**

13        34. In order to hire a temporary replacement worker, the  
14 following documents had to be completed by the applicant and  
15 received at the Ralphs Grocery store at which the applicant  
16 desired to work:

17        a. Temporary Work Employment Application: This form  
18 required the applicant to state, among other things, his or her  
19 name, social security number, current and/or latest employment,  
20 and whether he or she had ever previously worked for Ralphs. It  
21 also required the applicant to certify that "the information and  
22 answers given by me in this Employment Application are true and  
23 correct to the best of my knowledge[.]"

24        b. Payroll Authority - Temporary Employee: This form  
25 was typically completed by the Store Director and signed by the  
26 applicant. It required, among other things, the applicant's name  
27 and social security number. It also asked whether the applicant  
28 had previously worked for Ralphs.

1 c. INS Form I-9, Employment Eligibility Verification:

2 Ralphs was required by law to complete this form for all new  
3 hires, including temporary replacement workers.

4 i. Section 1 of the form had to be completed by  
5 the applicant. It required the applicant to list, among other  
6 things, his or her name, date of birth, social security number,  
7 and address. It also required the applicant to attest that he or  
8 she was "aware that federal law provides for imprisonment and/or  
9 fines for false statements or use of false documents in  
10 connection with completion of this form."

11 ii. Section 2 of the form had to be completed by  
12 the Store Director. It required the Store Director to verify the  
13 applicant's identity and eligibility to work by personally  
14 examining certain acceptable forms of identification documents,  
15 and to record information about each document examined. It also  
16 required the Store Director to sign a "Certification," by which  
17 the Store Director "attest[ed], under penalty of perjury, that  
18 [he or she had] examined the [identification] document(s)  
19 presented by the above-named employee, [and] that the above-  
20 listed document(s) appear to be genuine and to relate to the  
21 employee named[.]"

22 d. IRS Form W-4, Employee's Withholding Allowance  
23 Certificate: Each applicant was required by law to complete this  
24 form and to sign it under penalty of perjury. It required the  
25 applicant to list, among other things, his or her name, social  
26 security number, and address, as well as the total number of  
27 allowances claimed for federal income tax purposes.

28 35. Before a temporary replacement worker was formally

1 hired and entered into the Ralphs' electronic timekeeping and  
2 computerized payroll systems, certain information had to be  
3 entered into the Ralphs Human Resources Information System  
4 ("HRIS") by a member of the store's non-union management team.  
5 This information included: the applicant's name, social security  
6 number, date of birth, and home address; whether the applicant  
7 was a union member; and whether the applicant was eligible to  
8 receive health, pension, and other welfare benefits.

9 36. If an applicant was an existing Ralphs employee, HRIS  
10 would so indicate when the applicant's social security number was  
11 entered and would not permit the hiring process to continue under  
12 that social security number.

13 37. Once the applicant's information was entered into the  
14 HRIS system, the temporary work employment application, payroll  
15 authority, Form I-9, and Form W-4, were sent to the personnel  
16 department at Ralph's corporate headquarters in Compton,  
17 California.

18 **G. OVERVIEW OF CRIMINAL CONDUCT**

19 38. During the lockout, defendants MCGOWAN, VANCE, DREW,  
20 KRUSKA, and MONTOYA, together with their co-conspirators at  
21 Ralphs (collectively "the Conspirators"), engaged in a course of  
22 criminal conduct involving the hiring of locked-out employees  
23 under false names, social security numbers, and documentation,  
24 which was intended to, and did, undermine the labor action by  
25 alleviating the economic incentives on the employers, including  
26 Ralphs, to end the labor dispute by negotiating a new collective  
27 bargaining agreement in a timely manner. As described further  
28 below, as part of this course of criminal conduct, the

1 Conspirators:

2 a. selectively recruited locked-out employees to  
3 secretly return to work as temporary replacement workers under  
4 false identities;

5 b. covertly hired and employed hundreds of locked-out  
6 employees to work during the lockout under: (i) names and social  
7 security numbers of other people or (ii) fictitious or altered  
8 names and social security numbers;

9 c. implemented and furthered a corporate policy that,  
10 as applied, permitted, encouraged, condoned, and deliberately  
11 ignored the hiring of locked-out employees under false names and  
12 social security numbers;

13 d. caused Ralphs Store Directors to falsely complete  
14 government verification of identity and eligibility to work forms  
15 (known as INS Forms I-9) for locked-out employees hired under  
16 false identities, falsely attesting in these forms that they had  
17 personally examined genuine identification documents presented by  
18 such employees;

19 e. caused locked-out employees who agreed to return  
20 to work during the lockout to falsely complete government tax  
21 withholding allowance certificates (known as IRS Forms W-4)  
22 using false names and social security numbers;

23 f. generated thousands of false hiring and employment  
24 records for locked-out employees who were rehired under false  
25 names and social security numbers to work during the lockout;

26 g. caused Ralphs to issue hundreds of weekly payroll  
27 checks from its headquarters in Compton, California to locked-out  
28 employees in the false names they were using, and then allowed



1 these employees to cash the checks at Ralphs stores;

2 h. acted to conceal their hiring of locked-out  
3 employees from the Unions by, among other things, assigning  
4 locked-out employees to work at stores far from the stores at  
5 which they regularly worked and moving locked-out employees to  
6 new stores when they were seen working by Union members;

7 i. caused Ralphs to issue hundreds of false IRS Forms  
8 W-2 to locked-out employees who had worked under false names and  
9 social security numbers, and submitted copies of these false  
10 forms to the Social Security Administration ("SSA"), which  
11 thereafter furnished them to the Internal Revenue Service  
12 ("IRS"); and

13 j. caused Ralphs to submit dozens of false Remittance  
14 Reports to two joint employer-union administered employee benefit  
15 funds (collectively, the "Funds"), which omitted thousands of  
16 hours worked at Ralphs stores during the lockout by secretly  
17 rehired locked-out and striking employees.

18 39. The hiring of locked-out workers under false names  
19 and social security numbers caused Ralphs to contribute  
20 substantially less than was required to the two joint employer-  
21 union administered benefit funds for the locked-out workers who  
22 worked during the lockout under false identification information  
23 because the required contributions were calculated based upon the  
24 number of hours worked by the employee on a monthly basis.

25 II.

26 THE OBJECTS OF THE CONSPIRACY

27 40. Beginning in or before August 2003 and continuing until  
28 at least March 2005, within the Central District of California



1 and elsewhere, defendants MCGOWAN, VANCE, DREW, KRUSKA, and  
2 MONTOYA, together with others known and unknown to the Grand  
3 Jury, knowingly conspired, combined, and agreed to commit the  
4 following offenses against the United States:

5 a. Knowingly, and with intent to deceive, to cause  
6 locked-out employees to falsely represent social security numbers  
7 to be the social security numbers assigned to them by SSA, when,  
8 in truth and in fact, those social security numbers had not been  
9 assigned to them by SSA, in violation of Title 42, United States  
10 Code, Section 408(a)(7)(B) and Title 18, United States Code,  
11 Section 2;

12 b. Knowingly, and with intent to commit and to aid  
13 and abet unlawful activity constituting violations of Federal law  
14 as set forth in paragraph 41 below, to cause locked-out employees  
15 to transfer and use, without lawful authority, in and affecting  
16 interstate commerce, means of identification of other persons, in  
17 violation of Title 18, United States Code, Sections 1028(a)(7)  
18 and 2; and

19 c. Knowingly and willfully to falsify, conceal, and  
20 cover up, and cause others to falsify, conceal, and cover up, by  
21 trick, scheme, and device, material facts within the jurisdiction  
22 of SSA and IRS, agencies of the executive branch of the United  
23 States government, in violation of Title 18, United States Code,  
24 Sections 1001(a)(1) and 2.

25 41. In causing locked-out employees to transfer and use  
26 other individuals' names, social security numbers, and other  
27 means of identification during the lockout, defendants MCGOWAN,  
28 VANCE, DREW, KRUSKA, and MONTOYA, together with others known and

1 unknown to the Grand Jury, intended to commit, and intended to  
2 and did aid and abet, the following unlawful activity that  
3 constituted violations of Federal law:

4           a.     Causing locked-out employees to falsely complete  
5 IRS Forms W-4 using other individuals' names and social security  
6 numbers, and signing these false forms under penalty of perjury,  
7 in violation of Title 26, United States Code, Section 7205(a) and  
8 Title 18, United States Code, Section 1001(a)(2);

9           b.     Issuing materially false IRS Forms W-2 to  
10 locked-out employees who worked during the lockout using other  
11 individuals' means of identification, in violation of Title 26,  
12 United States Code, Section 7204;

13           c.     Filing these materially false IRS Forms W-2 with  
14 SSA, knowing that SSA would subsequently furnish these false  
15 forms to IRS, in violation of Title 18, United States Code,  
16 Section 1001(a)(2);

17           d.     Concealing from SSA and IRS the true and actual  
18 amounts of income received in 2003 by locked-out employees who  
19 worked for Ralphs during the lockout using other individuals'  
20 means of identification, in violation of Title 18, United States  
21 Code, Section 1001(a)(1); and

22           e.     Concealing from SSA and IRS the true identities of  
23 locked-out employees who worked during the lockout using other  
24 individuals' means of identification, in violation of Title 18,  
25 United States Code, Section 1001(a)(1).

1 III.

2 THE MANNER AND MEANS OF THE CONSPIRACY

3 42. The objects of the conspiracy were achieved in the  
4 following manner and by the following means, among others:

5 A. RALPHS' CORPORATE POLICY REGARDING THE HIRING OF LOCKED-OUT  
6 EMPLOYEES

7 43. In or about the Summer of 2003, Ralphs began preparing  
8 for a possible labor action by the Unions.

9 44. As part of its preparation, in or about September 2003,  
10 Ralphs distributed a confidential strike manual to its non-union  
11 management personnel that set forth the procedures and policies  
12 to be followed in the event of such a labor action. The strike  
13 manual stated in part:

14 Under no circumstances should [Store  
15 Directors] **knowingly hire** members from  
16 the striking bargaining unit. This  
17 would include striking union members  
employed by competitors involved in the  
labor dispute. In order to leverage our  
bargaining position, we must enforce  
this policy. (bold and italics added).

18 45. This policy came to be known within Ralphs as the "not  
19 knowingly hire" policy. Because this policy did not absolutely  
20 and unequivocally prohibit the hiring of locked-out and striking  
21 employees in all circumstances, it could be, and was, applied by  
22 the Conspirators, including defendants MCGOWAN, VANCE, DREW,  
23 KRUSKA, and MONTROYA, to allow Store Directors to hire locked-out  
24 and striking employees if they could plausibly deny knowing that  
25 applicants for temporary replacement positions were union  
26 members.

27 46. In fact, Ralphs' senior management, including defendant  
28 MCGOWAN, and Zone Managers, including defendants VANCE, DREW,

1 KRUSKA, and MONTTOYA, used the "not knowingly hire" policy to  
2 justify the hiring of locked-out and striking employees as  
3 temporary replacement workers so long as there was a plausible  
4 basis for denying knowledge of the employees' status. This  
5 understanding resulted from a number of facts and circumstances,  
6 including the following:

7 a. In explaining the "not knowingly hire" policy to  
8 their subordinates, Ralphs' senior management, including  
9 defendant MCGOWAN, and Zone Managers, including defendants VANCE,  
10 DREW, KRUSKA, and MONTTOYA, emphasized the word "knowingly" in  
11 order to implicitly invite non-compliance with the policy.

12 b. Leading up to and during the lockout, defendants  
13 MCGOWAN, VANCE, DREW, KRUSKA, and MONTTOYA made other statements  
14 and comments to their subordinates indicating that that Store  
15 Directors should hire locked-out employees as necessary to help  
16 operate their stores.

17 c. When defendants MCGOWAN, VANCE, DREW, KRUSKA and  
18 MONTTOYA visited stores during the lockout and recognized locked-  
19 out employees working, they did not instruct the Store Directors  
20 to immediately terminate these employees, nor did they take any  
21 action against the Store Directors for having hired such  
22 employees in violation of the "not knowingly hire" policy.

23 B. RECRUITMENT OF LOCKED-OUT EMPLOYEES TO WORK DURING THE  
24 LOCKOUT

25 47. Leading up to and during the lockout, the Conspirators,  
26 including defendants MCGOWAN, VANCE, DREW, KRUSKA, and MONTTOYA,  
27 directed Store Directors to identify "experienced" grocery  
28 workers who might be willing to work during a strike or lockout

1 and/or instructed Store Directors to hire locked-out workers  
2 referred to the Store Directors by the defendants.

3 48. Defendant KRUSKA and others also attempted and  
4 instructed others to attempt to assemble "roving teams" of  
5 grocery workers who could assist at different stores within a  
6 Zone in the event of a strike or lockout.

7 49. In meetings with Store Directors before the lockout, a  
8 number of the Conspirators, including defendants MCGOWAN and  
9 KRUSKA, suggested that Store Directors could hire locked-out  
10 employees as temporary replacement workers as long as the Store  
11 Directors could plausibly deny knowing that the applicants were  
12 locked-out employees.

13 50. Locked-out employees who wanted to return to work were  
14 told by the Conspirators and others, including defendants VANCE,  
15 DREW, and MONTOYA, that they could work during the lockout if  
16 they agreed to use a false name and social security number.

17 C. HIRING OF LOCKED-OUT EMPLOYEES UNDER FALSE NAMES, SOCIAL  
18 SECURITY NUMBERS, AND DOCUMENTATION

19 51. During the lockout, in order to secure the employment  
20 of well-trained, experienced, and reliable grocery workers,  
21 defendants MCGOWAN, VANCE, KRUSKA, DREW, MONTOYA, and others,  
22 knowingly directed, instructed, caused, and approved the hiring  
23 of hundreds of locked-out employees under false names, social  
24 security numbers, and documentation. These locked-out employees  
25 were hired in the following ways, among others:

26 a. Some locked-out employees were hired and worked as  
27 temporary replacement workers at the stores at which they  
28 regularly worked (their "home stores").

1           b.    Some locked-out employees were hired as temporary  
2 replacement workers at their home stores, and then assigned to  
3 other stores at which they worked as temporary replacement  
4 workers in order to avoid detection by the Unions and locked-out  
5 workers in and around the locked-out workers' home stores.

6           c.    Some locked-out employees were referred by their  
7 supervisors at their home stores to other stores at which they  
8 were hired and worked as temporary replacement workers, also in  
9 order to avoid detection by the Unions and locked-out workers in  
10 and around the locked-out workers' home stores.

11           d.    Some locked-out employees approached Store  
12 Directors or Zone Managers at stores other than their home  
13 stores, on their own initiative, and were hired and worked as  
14 temporary replacement workers at the other stores.

15           52. As defendants MCGOWAN, VANCE, DREW, KRUSKA, and MONTOYA  
16 well knew, locked-out employees who agreed to work during the  
17 lockout had to work under false names and social security  
18 numbers, or else they could not be entered into HRIS. Locked-out  
19 employees who worked during the lockout chose, or were provided,  
20 false names and social security numbers in the following ways,  
21 among others:

22           a.    Some locked-out employees were hired as temporary  
23 replacement workers under the names and social security numbers  
24 of family members, such as a spouse, child, brother, or sister.

25           b.    Some locked-out employees were hired as temporary  
26 replacement workers under entirely fictitious names and social  
27 security numbers.

28           c.    Some locked-out employees were hired as temporary

1 replacement workers under altered versions of their true names  
2 and social security numbers.

3 53. The hiring of locked-out employees to work during the  
4 lockout under false names and social security numbers as  
5 directed, instructed, approved, and caused by defendants MCGOWAN,  
6 VANCE, DREW, KRUSKA, MONTROYA, and others, resulted in:

7 a. Payroll Authorities listing false names and social  
8 security numbers for applicants;

9 b. INS Forms I-9, Section 1, listing false names,  
10 social security numbers, dates of birth, and addresses;

11 c. INS Forms I-9, Section 2, containing false  
12 certifications under penalty of perjury that the Ralphs

13 representative personally examined genuine identification  
14 documents presented by applicants who were locked-out employees;

15 d. INS Forms I-9 that were not completed for  
16 applicants who were locked-out employees in violation of Ralphs'  
17 legal obligation to complete this form whenever it hired any new  
18 worker;

19 e. Temporary Work Employment Applications submitted  
20 by locked-out worker applicants listing false names, social  
21 security numbers, dates of birth, addresses, and employment  
22 histories; and

23 f. IRS Forms W-4 listing false names, social security  
24 numbers, and addresses, and signed by the locked-out worker  
25 applicants under penalty of perjury.

26 54. The hiring of locked-out employees under false names  
27 and false social security numbers as directed, instructed,  
28 approved, and caused by defendants MCGOWAN, VANCE, DREW, KRUSKA,



1 MONTOYA, and others, resulted in the entry of false information  
 2 into HRIS including, among other things, false names, social  
 3 security numbers, dates of birth, and addresses, as well as false  
 4 information that applicants were not bargaining unit members and  
 5 were not eligible to receive employee benefits.

6 D. ISSUANCE OF PAYROLL CHECKS IN FALSE NAMES TO LOCKED-OUT  
EMPLOYEES WHO WORKED UNDER FALSE NAMES AND SOCIAL SECURITY  
 7 NUMBERS

8 55. Ralphs paid replacement workers by check on a weekly  
 9 basis for work performed during the preceding week. The checks  
 10 were delivered to temporary replacement workers at their store of  
 11 employment from Ralphs' corporate headquarters in Compton,  
 12 California.

13 56. During the lockout, defendants MCGOWAN, VANCE, DREW,  
 14 KRUSKA, MONTOYA, and others, caused Ralphs to issue hundreds of  
 15 weekly paychecks to locked-out employees who were working under  
 16 false names and social security numbers.

17 E. THE CONSPIRATORS' DELIBERATE ACTIONS TO CONCEAL THE HIRING  
OF LOCKED-OUT EMPLOYEES FROM THE UNIONS

18 57. During the lockout, defendants MCGOWAN, VANCE, DREW,  
 19 KRUSKA, MONTOYA, and others, concealed Ralphs' hiring of locked-  
 20 out employees from the Unions and others by, among other things:

21 a. Requiring locked-out employees who returned to  
 22 work during the lockout to adopt and use false names when working  
 23 in their assigned stores, including wearing name badges  
 24 displaying their false names.

25 b. Causing locked-out employees to work at stores  
 26 other than their home stores, including in many instances stores  
 27 that were considerable distances from the locked-out employees'  
 28



1 home stores.

2 c. Causing locked-out employees to perform tasks that  
3 kept them away from the front of the store, or to work shifts  
4 when the stores were closed to the public.

5 d. Using code words, such as "experienced workers,"  
6 "experienced help," "skilled workers," "skilled help," and "Radio  
7 Shack" employee, when communicating with each other about the  
8 recruitment and hiring of locked-out employees.

9 e. Causing the falsification of Ralphs' hiring and  
10 employment records to conceal and disguise the hiring of locked-  
11 out employees in the event the Unions were able to obtain access  
12 to those records.

13 f. Causing Ralphs to under-report hours worked by the  
14 locked-out employees during the lockout to the administrators of  
15 two joint employer-union administered benefit funds that  
16 provided, among others, pension and medical benefits. As a  
17 result, Ralphs contributed substantially less than was required  
18 to the two joint employer-union administered benefit funds.

19 **F. ISSUANCE AND FILING OF FALSE TAX DOCUMENTS**

20 58. In or about mid-January 2004, defendants MCGOWAN,  
21 VANCE, DREW, KRUSKA, and MONTTOYA, together with others, caused  
22 Ralphs to issue hundreds of materially false IRS Forms W-2 for  
23 2003. These forms were false in the following ways, among  
24 others:

25 a. IRS Forms W-2 issued to locked-out employees who  
26 worked during the lockout under fictitious names and social  
27 security numbers: (i) falsely stated the employees' names, social  
28 security numbers, and addresses; (ii) falsely attributed the

1 income the employees received during the lockout to fictitious  
2 persons; and (iii) falsely applied the social security  
3 contributions withheld from such income to non-existent social  
4 security accounts of fictitious persons.

5           b.    IRS Forms W-2 issued to locked-out employees who  
6 worked during the lockout under the names and social security  
7 numbers of other persons: (i) falsely stated the employees'  
8 names, social security numbers, and in some instances addresses;  
9 (ii) falsely reported the income the employees had received  
10 during the lockout as having been earned by other persons; and  
11 (iii) falsely applied the social security contributions withheld  
12 from such income to the social security accounts of other  
13 persons.

14           c.    IRS Forms W-2 issued in the true names of locked-  
15 out employees who worked during the lockout for work performed  
16 prior to the lockout: (i) falsely under-reported the total amount  
17 of income the employees had received during 2003, by omitting the  
18 income they had received during the lockout; and (ii) falsely  
19 understated the amount of social security contributions that  
20 should have been withheld from the employees' total annual  
21 income.

22           59.   In or about March 2004, Ralphs electronically filed  
23 copies of these false IRS Forms W-2 with SSA, for processing by  
24 SSA.

25           60.   In or about May 2004, SSA electronically furnished the  
26 false IRS Forms W-2 to IRS, for processing by IRS.

## IV.

OVERT ACTS

61. In furtherance of the conspiracy, and to accomplish its objects, defendants MCGOWAN, VANCE, DREW, KRUSKA, and MONTOYA, together with others known and unknown to the Grand Jury, committed and caused others to commit the following overt acts, among others, in the Central District of California and elsewhere:

Overt Act No. 1: In or about August and/or September 2003, MCGOWAN and others held one or more meetings at Ralphs' corporate headquarters attended by Zone Managers, including VANCE, DREW, KRUSKA, and MONTOYA, at which copies of the confidential strike manual containing the "not knowingly hire" policy were provided to Zone Managers for distribution to their Store Directors;

Overt Act No. 2: In or about September 2003, at a meeting of store directors in Zone 1, KRUSKA instructed his Store Directors that locked-out employees hired as temporary replacement workers should use false names, stating, "Tom can't be Tom or the system will catch it" and "Cindy can't be Cindy."

Overt Act No. 3: In or about late September 2003, KRUSKA instructed the Store Director for Store No. 118 in Murrieta, California to organize a roving team of locked-out employees who could stock the shelves of Ralphs stores at night throughout KRUSKA's Zone 1 in the event of a labor action.

Overt Act No. 4: In or about late September 2003, MCGOWAN visited Store No. 296 in Anaheim, California and asked the Store Director if the Store Director had hired any "aces," to

1 which the Store Director responded that he hired experienced  
2 people from food chains and stores not involved in the strike.  
3 In response, MCGOWAN said "no, people who know our system,"  
4 emphasizing "our."

5 Overt Act. No. 5: In or about late September 2003,  
6 MONTOYA visited Store No. 296 in Anaheim, California and asked  
7 the Store Director if he had enough temporary workers in place  
8 for the coming strike. The Store Director told MONTOYA that the  
9 Store Director had not hired enough temporary employees, to which  
10 MONTOYA responded that the Store Director would have to look for  
11 more "experienced" help. MONTOYA further stated that the Store  
12 Director knew people who lived far enough away from his Anaheim  
13 store, people who "knew what they were doing," and that the Store  
14 Director should do whatever it took to keep the store running.

15 Overt Act No. 6: In or about late September or early  
16 October 2004, in a meeting of Store Directors in Zone 4 in  
17 preparation for the anticipated labor dispute, DREW described the  
18 coming strike as a "war" with the Unions and instructed his Store  
19 Directors to do whatever it took to run the business in their  
20 stores during the strike.

21 Overt Act No. 7: In or about late September or early  
22 October 2003, MCGOWAN directed the Zone Manager for Zone 5 to  
23 instruct his Store Directors to determine whether their grocery  
24 workers would be willing to work in the event of a labor action.

25 Overt Act No. 8: In or about late September or early  
26 October 2003, MCGOWAN told the Zone Manager for Zone 5 that union  
27 members recruited from Vons or Albertsons to work as temporary  
28 replacement workers at Ralphs stores should falsely state in

1 their temporary employment applications that they had previously  
2 worked at "Radio Shack," instead of at Vons or Albertsons.

3 Overt Act No. 9: In or about late September or early  
4 October 2003, MCGOWAN directed the Zone Manager for Zone 5 to  
5 instruct the Store Director for Store No. 108 in La Jolla,  
6 California to ask his grocery workers, particularly his key  
7 persons, whether they would be willing to work on a roving crew  
8 that would assist at various Ralphs stores in Zone 5 in the event  
9 of a lockout.

10 Overt Act No. 10: In or about early October 2003,  
11 MCGOWAN had a conversation with the Store Director of Store No.  
12 187 in Tustin, California during which MCGOWAN said, in reference  
13 to Ralphs' policy regarding the hiring of locked-out and striking  
14 employees, "Now you've been through a strike and now you know  
15 what you really need to do to staff your store," or words to that  
16 effect.

17 Overt Act No. 11: In or about early-October 2003, VANCE  
18 told the Store Director for Store No. 13 in Rancho Cucamonga,  
19 California that VANCE needed help; that a locked-out employee  
20 from Store No. 13 could work at Store No. 195 in La Quinta,  
21 California; and that VANCE could authorize the hiring of locked-  
22 out employees because the direction came from people to whom  
23 VANCE reported, which included MCGOWAN.

24 Overt Act No. 12: In or about early October 2003, a co-  
25 conspirator who was the Store Director for Store No. 705 in Los  
26 Angeles, California asked a locked-out worker from Store No. 705  
27 if the locked-out worker would "do a favor" for DREW and work  
28 during the anticipated strike/lockout under the identification of

1 another person.

2           Overt Act NO. 13: In or about October 10, 2003, a co-  
3 conspirator who was the Store Director for Store No. 705 in Los  
4 Angeles, California hired the locked-out worker from Store No.  
5 705 to work as a temporary employee during the anticipated  
6 strike/lockout under a false name and social security number.

7           Overt Act No. 14: Between on or about October 12, 2003,  
8 and on or about October 31, 2003, MCGOWAN told the Zone Manager  
9 for Zone 7 that the Zone Manager should recruit "experienced"  
10 workers to improve the conditions in Zone 7 stores.

11           Overt Act No. 15: Between on or about October 12, 2003  
12 and in or about January 2004, VANCE told the Store Director for  
13 Store No. 145 in Riverside, California, the store at which VANCE  
14 maintained his office, that the "coast was clear" and that the  
15 "powers that be" had authorized the hiring of locked-out  
16 employees.

17           Overt Act No. 16: In or about mid-October 2003, VANCE  
18 placed a telephone call to the Store Director for Store No. 609  
19 in Riverside, California and told the Store Director to hire the  
20 wife of VANCE, whom the Store Director and VANCE knew was a  
21 locked-out employee, at Store No. 609 because VANCE needed his  
22 wife to work during the lockout at several stores throughout  
23 VANCE's Zone.

24           Overt Act No. 17: On or about October 17, 2003, MCGOWAN  
25 instructed the Zone Manager for Zone 5 to have the Store Director  
26 for Store No. 168 in Encinitas, California terminate a locked-out  
27 employee who was discovered by a data comparison run comparing  
28 the identities of Ralphs temporary replacement workers and

1 locked-out Albertsons and striking Vons employees. While  
2 directing the termination, MCGOWAN assured the Zone Manager that  
3 the data comparison run was "a one-time purge, if you know what I  
4 mean," or words to that effect.

5 Overt Act No. 18: On or about October 18, 2003, VANCE  
6 gave the Store Director for Store No. 609 in Riverside,  
7 California a temporary employment application and other documents  
8 to hire VANCE's wife, whom the Store Director and VANCE knew was  
9 a locked-out employee at Store No. 609. The name and social  
10 security number used in the hiring of VANCE's wife, and entered  
11 into HRIS by the Store Director at VANCE's instruction, was that  
12 of the son of VANCE's wife.

13 Overt Act No. 19: On or about October 22, 2003, DREW  
14 told a locked-out worker from Store No. 210 in Los Angeles,  
15 California who had recently been selected as the most recent  
16 Ralphs courtesy clerk of the year, that DREW could arrange for  
17 the locked-out worker to work at a Ralphs store in Pasadena,  
18 California. At that time, DREW asked if the locked-out worker  
19 had the social security number of another person that he could  
20 use. In response, the locked-out worker told DREW that he did  
21 not have anyone else's social security number that he could use  
22 to work. DREW then instructed the locked-out worker to contact a  
23 co-conspirator who was the Store Director for Store No. 743 in  
24 Pasadena, and provided the locked-out worker with the name and  
25 telephone number of that Store Director.

26 Overt Act No. 20: On or about October 23, 2003, the  
27 locked-out worker from Store No. 210, on instructions from DREW,  
28 met with a co-conspirator who was the Store Director for Store



1 No. 743, at which time the Store Director asked whether the  
2 locked-out worker was the "Malcolm" the Store Director had  
3 discussed with DREW. Upon learning that the locked-out worker  
4 did not have access to a social security number under which to  
5 work, the Store Director made arrangements for the locked-out  
6 worker to work under the false name "Cornell Cole" and instructed  
7 the locked-out worker to report to work at Store No. 743 the next  
8 day.

9 Overt Act No. 21: In or about October 2003, DREW, in  
10 the context of a discussion with the Store Director for Store No.  
11 210 in Los Angeles, California about the Store Director's need  
12 for temporary replacement workers in his store, instructed the  
13 Store Director to "call his buddies," to ask if they could send  
14 temporary replacement workers, including locked-out retail  
15 clerks, to work at Store No. 210.

16 Overt Act No. 22: On or about October 26, 2003, a co-  
17 conspirator who was the Store Director for Store No. 743 in  
18 Pasadena, California called a female locked out worker from Store  
19 No. 743 and asked if she was ready to return to work during the  
20 lockout because the people who returned to work "would be taken  
21 care of." Upon receiving a positive response from the locked-out  
22 worker, the Store Director for Store No. 743 instructed the  
23 locked-out worker to report for work that evening at Store No.  
24 210 in Los Angeles and indicated that she would need to use a  
25 false social security number for payroll purposes.

26 Overt Act No. 23: In or about late October 2003,  
27 MONTROYA asked the Zone Manager for Zone 5 "if a store director  
28 wanted to hire a locked-out worker, what should they do." In



1 response, the Zone Manager for Zone 5 informed MONTTOYA that  
2 locked-out employees should work (a) under names and social  
3 security numbers of family members, and (b) at stores other than  
4 their home stores.

5 Overt Act No. 24: On or about October 31, 2003  
6 through early January 2004, KRUSKA called the Store Director for  
7 Store No. 118 in Murrieta, California with instructions for where  
8 to send the roving crew of locked-out employees, whom KRUSKA had  
9 earlier directed the Store Director to assemble, to stock the  
10 shelves of Ralphs stores in Zone 1 that were in need of  
11 assistance after the picket lines were removed from Ralphs  
12 stores.

13 Overt Act No. 25: In or about early November 2003,  
14 MCGOWAN, after inspecting a store in Zone 8 that MCGOWAN  
15 described as "like Disneyland" and reportedly had six  
16 "experienced" workers, instructed KRUSKA to contact the Zone  
17 Manager for Zone 5 about obtaining more "experienced" workers in  
18 his Zone 1.

19 Overt Act No. 26: In or about early November 2003,  
20 KRUSKA told the Store Director for Store No. 103 in San Diego,  
21 California that KRUSKA had instructed a locked-out employee from  
22 Store No. 108 in La Jolla, California who was interested in  
23 working to contact the Store Director. KRUSKA further instructed  
24 the Store Director that the Store Director should not hire the  
25 locked-out employee under his true name, but that when the Store  
26 Director entered the locked-out employee into the HRIS system, a  
27 "six" could easily become a "nine" and "Suzie" could easily  
28 become a "Sally."

1           Overt Act No. 27: In or about November 2003, MCGOWAN,  
2 while inspecting Store No. 163 in San Juan Capistrano,  
3 California, told the Store Director that he needed to "start  
4 networking with your friends in San Diego," about the hiring of  
5 temporary replacement workers, including locked-out workers.

6           Overt Act No. 28: In or about November 2003, DREW spoke  
7 with a locked-out worker from Store No. 745 in Newport Beach,  
8 California who was also the half-brother of DREW, about the  
9 locked-out worker's desire to work during the lockout. At that  
10 time, DREW and the locked-out worker from Store No. 745 discussed  
11 that the locked-out worker would need to use a false name and  
12 social security number to do so. Soon thereafter, the locked-out  
13 worker from Store No. 745 informed DREW that the locked-out  
14 worker had received permission to use the name and social  
15 security number of his father. In response, DREW told the  
16 locked-out worker that DREW had made arrangements with "Kelley"  
17 for the locked-out worker to work in "Kelley's" store.

18           Overt Act No. 29: In or about November 2003, MONTOYA  
19 told a locked-out employee from Store No. 650 in Huntington  
20 Beach, California that some Store Directors were doing some  
21 creative things with hiring so that the union would not know who  
22 was working during the lockout. MONTOYA further told the locked-  
23 out employee that if the employee decided to work during the  
24 lockout, she would need to use the name and social security  
25 number of another person when returning to work because the  
26 Unions were checking whether Ralphs was rehiring locked-out  
27 employees.

28           Overt Act No. 30: In or about November 2003, MONTOYA

1 authorized the locked-out employee from Store No. 650 in  
2 Huntington Beach, California to return to work at Store No. 72 in  
3 Fullerton, California knowing the person to be a locked-out  
4 employee.

5 Overt Act No. 31: In or about November 2003, MONTOYA  
6 reassured the locked-out employee from Store No. 650 in  
7 Huntington Beach, California, within Zone 8, that she would not  
8 lose her recent promotion if it was discovered by the Zone  
9 Manager for Zone 8 that she had worked during the lockout because  
10 MONTOYA had exchanged locked-out employees with the Zone Manager  
11 for Zone 8.

12 Overt Act No. 32: In or about November 2003, MCGOWAN,  
13 in response to a request by the Zone Manager for Zone 7 for  
14 further clarification regarding the "not knowingly hire" policy,  
15 stated, in substance, that a temporary employment application  
16 suggesting that the applicant might be a locked-out or striking  
17 employee should be returned to the applicant as unacceptable, and  
18 that the applicant should then be offered another application to  
19 complete, in which the applicant would not reveal that he or she  
20 was a locked-out or striking employee.

21 Overt Act No. 33: In or about November 2003, MCGOWAN  
22 told the Store Director for Store No. 167 in San Diego,  
23 California that social security numbers of temporary replacement  
24 workers were no longer being checked.

25 Overt Act No. 34: In or about mid-November 2003, KRUSKA  
26 instructed the Store Director for Store No. 159 in San Diego,  
27 California that a locked-out employee who was working in Store  
28 No. 159 under her true name and social security number would

1 thereafter need to work under the identification of a relative.  
2 KRUSKA explained by way of example: "Dana can't be Dana, but Dana  
3 could become Dana's mom or son."

4 Overt Act No. 35: Between on or about October 12, 2003  
5 and January 2004, KRUSKA walked through Store No. 159 in San  
6 Diego, California with a locked-out employee whom KRUSKA knew to  
7 be locked out and gave the locked-out employee instructions  
8 relating to the management of the store.

9 Overt Act No. 36: In or about late November 2003, VANCE  
10 told the Store Director for Store No. 195 in La Quinta,  
11 California that it was okay to hire two locked-out employees  
12 referred to the Store Director by the Produce Supervisor for Zone  
13 3, and told the Store Director that the Store Director should use  
14 the social security numbers of a sibling or spouse of the two  
15 locked-out employees in order to place them on Ralphs' payroll.

16 Overt Act No. 37: In or about late November or early  
17 December 2003, during a visit to Store No. 34 in Laguna Niguel,  
18 California, MCGOWAN thanked two temporary replacement workers,  
19 whom MCGOWAN knew to be locked-out employees, for working during  
20 the lockout.

21 Overt Act No. 38: In or about November or December  
22 2003, MCGOWAN entered Store No. 187 in Tustin, California while  
23 the Store Director was at lunch. When MCGOWAN saw the wife of  
24 the Store Director for Store No. 163 (whom he knew to be a  
25 locked-out employee) working as a temporary replacement worker in  
26 the front portion of the store, he immediately left the store.  
27 MCGOWAN then called a co-conspirator who was the Zone Manager for  
28 Zone 8 and told him to tell the Store Director for Store No. 187

1 to be more careful about whom he left in charge of the front,  
2 public, portion of the store while he, the Store Director, was  
3 away from the store.

4 Overt Act No. 39: In or about November or December  
5 2003, VANCE told a locked-out employee who had been working  
6 during the lockout under her true name and social security number  
7 at Store No. 609 in Riverside, California to start using the name  
8 and social security number of a family member if she wanted to  
9 continue to work during the lockout.

10 Overt Act No. 40: In or about late November or early  
11 December 2003, MONTOYA told the Store Director for Store No. 135  
12 in Anaheim, California, the store at which MONTOYA maintained her  
13 office, that the Store Director was going to get an "experienced"  
14 person to fill out a temporary work employment application and  
15 that the Store Director should hire the applicant. At that time,  
16 MONTOYA instructed the Store Director that the applicant should  
17 refer to "Radio Shack" or "Staples" on the application.

18  
19 Overt Act No. 41: In or about late December 2003 or  
20 early January 2004, DREW spoke with the locked-out worker from  
21 Store No. 745, who was also the half-brother of DREW, and told  
22 the locked-out worker that it was not a good idea for the locked-  
23 out worker to work during the lockout any longer and terminated  
24 the locked-out worker.

25 Overt Act No. 42: In or about early January 2003, after  
26 publication of newspaper articles regarding the hiring of locked-  
27 out workers at certain Ralphs stores in Southern California,  
28 KRUSKA instructed the Store Director for Store No. 159 in San

1 Diego, California to tell a locked-out employee working in Store  
2 No. 159 to take some time off.

3 Overt Act No. 43: On or about January 9, 2004, MCGOWAN  
4 told the Store Director for Store No. 163 in San Juan Capistrano,  
5 California, whose name had appeared in newspaper articles  
6 regarding the hiring of locked-out workers at certain Ralphs  
7 stores in Southern California, that the Store Director was being  
8 suspended with pay, but that he absolutely was not to tell  
9 anybody, including his wife, what was happening or that he was on  
10 suspension.

11 Overt Act No. 44: On or about January 9, 2004, MCGOWAN  
12 told the Zone Manager for Zone 5 that: (a) Ralphs could not  
13 protect Store Directors who had hired locked-out employees under  
14 false names and social security numbers; (b) any resulting  
15 adverse consequences to Store Directors were "just part of the  
16 job," or words to that effect; and (c) the Zone Manager should  
17 "stay strong," or words to that effect.

18 Overt Act No. 45: On or about March 23, 2004, MCGOWAN  
19 falsely told lawyers for Ralphs investigating allegations of  
20 unlawful hiring during the lockout that MCGOWAN learned of a  
21 locked-out employee working at Store No. 108 in La Jolla,  
22 California on October 18, 2003, and instructed the Zone Manager  
23 for Zone 5 to dismiss the employee.

24 Overt Act No. 46: In or about March or April 2004,  
25 MCGOWAN falsely claimed in a conversation with the Zone Manager  
26 for Zone 5 that on October 18, 2003: (a) MCGOWAN and the Zone  
27 Manager together had seen a locked-out price integrity auditor  
28 working at Store No. 108 in La Jolla; and (b) MCGOWAN had

1 instructed the Zone Manager to terminate the locked-out employee  
2 at that time.

3           Overt Act No. 47: On or about May 20, 2004, VANCE  
4 falsely told lawyers for Ralphs investigating allegations of  
5 unlawful hiring during the lockout that VANCE had not encouraged  
6 any of his Store Directors to hire locked-out workers during the  
7 lockout; that he was not aware of stores in his zone swapping  
8 locked-out workers who were working under false identities; and  
9 that his wife, who was a locked-out worker, had not worked at  
10 Ralphs stores during the lockout.

11           Overt Act No. 48: On or about October 13, 2004, DREW  
12 falsely told lawyers for Ralphs investigating allegations of  
13 unlawful hiring during the lockout that DREW had heard rumors  
14 that his half-brother, a locked-out worker from Store No. 745 in  
15 Newport Beach, was working in Store No. 705 in Los Angeles, and  
16 that DREW did not know whether his half-brother worked during the  
17 lockout.

18           Overt Act No. 49: On or about March 31, 2005, VANCE  
19 falsely represented to Special Agents of the United States  
20 Department of Labor, Office of Inspector General, that he never  
21 authorized the hiring of locked-out workers by Store Directors in  
22 his Zone, Zone 3, with the exception of the hiring of his wife at  
23 Store Number 609.

COUNTS TWO THROUGH TWELVE

[42 U.S.C. § 408(a)(7)(B) and 18 U.S.C. § 2]

62. The Grand Jury hereby repeats and realleges paragraphs 1 through 39 and 42 through 60 of this Indictment.

63. During the lockout, defendants MCGOWAN, VANCE, DREW, KRUSKA, and MONTOYA, and others known and unknown to the Grand Jury, caused hundreds of locked-out employees to adopt and use false social security numbers for a number of purposes, including:

a. To enable Ralphs to rehire locked-out employees as temporary replacement workers;

b. To enable Ralphs to employ skilled and experienced employees at its stores during the lockout;

c. To enable Ralphs to conceal its employment of locked-out employees from their Unions and from fellow union members; and

d. To enable Ralphs to conceal its illegal conduct from the NLRB, SSA, IRS, and other governmental agencies.

64. During the approximate periods specified below, in the Central District of California and elsewhere, the defendants specified below, aided and abetted by others known and unknown to the Grand Jury, knowingly, with intent to deceive, and for the purposes set forth in paragraph 63 above, caused the locked-out employees with the following initials to falsely represent the following numbers to be the social security numbers assigned to them by the Commissioner of Social Security, when, in truth and fact, as the defendants well knew, those numbers were not the social security numbers assigned to the locked-out employees by



the Commissioner of Social Security:

<u>COUNT</u>	<u>DEFENDANT</u>	<u>TIME PERIOD</u>	<u>LOCKED-OUT EMPLOYEE</u>	<u>FALSE SSN</u>
TWO	MCGOWAN	9/29/03 - 1/02/04	"W.H."	XXX-XX-0207
THREE	MCGOWAN	10/18/03 - 2/19/04	"M.C."	XXX-XX-6675
FOUR	MCGOWAN	10/1/03 - 1/22/04	"D.L."	XXX-XX-7843
FIVE	VANCE, MCGOWAN	10/18/03 - 1/22/04	"J.V."	XXX-XX-7879
SIX	VANCE, MCGOWAN	10/10/03 - 1/22/04	"C.C."	XXX-XX-6077
SEVEN	DREW	10/23/03 - 1/02/04	"M.I."	XXX-XX-6294
EIGHT	DREW	10/20/03 - 12/18/03	"S.M."	XXX-XX-9218
NINE	KRUSKA, MCGOWAN	11/12/03 - 1/22/04	"N.V.A."	XXX-XX-5471
TEN	KRUSKA, MCGOWAN	12/17/03 - 1/22/04	"S.M."	XXX-XX-0663
ELEVEN	MONTOYA, MCGOWAN	10/05/03 - 2/19/04	"E.W."	XXX-XX-6511
TWELVE	MONTOYA, MCGOWAN	9/30/03 - 1/22/04	"R.K."	XXX-XX-4870

## COUNTS THIRTEEN THROUGH TWENTY-ONE

[18 U.S.C. §§ 1028(a)(7) and 2]

65. The Grand Jury hereby repeats and realleges paragraphs 1 through 39 and 42 through 60 of this Indictment.

66. During the approximate periods specified below, in the Central District of California and elsewhere, the defendants specified below, aided and abetted by others known and unknown to the Grand Jury, knowingly, and with intent to commit and to aid and abet unlawful activity constituting violations of Federal law, as set forth in paragraph 41 above, caused each of the following locked-out employees to transfer and use, without lawful authority, in and affecting interstate commerce, the means of identification of another person, as described below:

<u>COUNT</u>	<u>DEFENDANT</u>	<u>TIME PERIOD</u>	<u>LOCKED-OUT EMPLOYEE</u>	<u>MEANS OF IDENTIFICATION</u>
THIRTEEN	MCGOWAN	11/10/03- 1/2/04	"R.M."	Social security number XXX-XX-6758, a valid social security number issued to a person other than "R.M."
FOURTEEN	VANCE, MCGOWAN	11/18/03- 1/31/04	"E.C."	Social security number XXX-XX-0956, a valid social security number issued to a person other than "E.C."
FIFTEEN	VANCE, MCGOWAN	11/2/03- 1/22/04	"M.V."	Social security number XXX-XX-9426, a valid social security number issued to a person other than "M.V."

<u>COUNT</u>	<u>DEFENDANT</u>	<u>TIME PERIOD</u>	<u>LOCKED-OUT EMPLOYEE</u>	<u>MEANS OF IDENTIFICATION</u>
SIXTEEN	DREW	11/4/03-1/14/04	"K.D."	Social security number XXX-XX-4853, a valid social security number issued to a person other than "K.D."
SEVENTEEN	DREW	10/10/03-1/19/04	"M.J."	Social security number XXX-XX-4259, a valid social security number issued to a person other than "M.J."
EIGHTEEN	KRUSKA, MCGOWAN	11/17/03-1/1/04	"D.H."	Social security number XXX-XX-6569, a valid social security number issued to a person other than "D.H."
NINETEEN	KRUSKA, MCGOWAN	11/8/03 - 1/22/04	"C.J."	Social security number XXX-XX-2617, a valid social security number issued to a person other than "C.J."
TWENTY	MONTOYA, MCGOWAN	11/5/03-1/22/04	"C.H."	Social security number XXX-XX-4379, a valid social security number issued to a person other than "C.H."
TWENTY - ONE	MONTOYA, MCGOWAN	10/2/03-1/22/04	"S.O."	Social security number XXX-XX-1998, a valid social security number issued to a person other than "S.O."

COUNT TWENTY-TWO

[18 U.S.C. §§ 1001(a)(1) and 2]

67. The Grand Jury hereby repeats and realleges paragraphs 1 through 39 and 42 through 60 of this Indictment.

68. Beginning in or about September 2003, and continuing until in or about March 2005, in the Central District of California and elsewhere, defendants MCGOWAN, VANCE, DREW, KRUSKA, and MONTROYA, knowingly and willfully falsified, concealed, and covered up, and caused others to falsify, conceal, and cover up, by trick, scheme, and device, the following material facts in a matter within the jurisdiction of SSA and IRS, agencies of the executive branch of the United States government:

a. The true and correct identities and social security numbers of locked-out employees who worked for Ralphs during the lockout under false names and social security numbers;

b. The true and correct amounts of income received in 2003 by locked-out employees who worked for Ralphs during the lockout under false names and social security numbers;

c. The true and correct amounts of social security contributions that should have been withheld from wages received in 2003 by locked-out employees who worked for Ralphs during the lockout;

d. The true and correct amounts of income received in 2003 by people whose names and social security numbers were used by locked-out employees who worked for Ralphs during the lockout;

e. The true and correct amounts of withheld social security contributions to be applied in 2003 to social security

1 accounts of people whose names and social security numbers were  
2 used by locked-out employees who worked for Ralphs during the  
3 lockout; and

4 f. The fact that no federal income taxes should have  
5 been withheld by Ralphs for people who did not work for Ralphs in  
6 2003, but whose names and social security numbers were used by  
7 locked-out employees who worked for Ralphs during the lockout.

8 69. Defendants MCGOWAN, VANCE, DREW, KRUSKA, and MONTTOYA  
9 falsified, concealed, and covered up, and caused others to  
10 falsify, conceal, and cover up, the above facts by and through  
11 the following tricks, schemes, and devices:

12 a. Causing locked-out employees who agreed to work  
13 during the lockout to complete IRS Forms W-4 using false names  
14 and social security numbers, and to sign these false forms under  
15 penalty of perjury;

16 b. Causing Ralphs to issue IRS Forms W-2 in or about  
17 mid-January 2004 for 2003 to locked-out employees who worked  
18 during the lockout under false names and social security numbers,  
19 which: (i) falsely under-reported the amounts of income received  
20 by these employees during 2003; and (ii) falsely understated the  
21 amounts of social security contributions that should have been  
22 withheld from these employees' earnings;

23 c. Causing Ralphs to issue IRS Forms W-2 in or about  
24 mid-January 2004 for 2003 to people who did not work for Ralphs  
25 during 2003, but whose names and social security numbers were  
26 used by locked-out employees who worked during the lockout,  
27 which: (i) falsely attributed income to these people that they  
28 did not receive during 2003; and (ii) falsely applied withheld

1 social security contributions to their social security accounts;  
2 and

3 d. Causing Ralphs to file the false IRS Forms W-2  
4 described in subparagraphs b and c above with SSA in or about  
5 March 2004, which IRS Forms W-2 defendants MCGOWAN, VANCE, DREW,  
6 KRUSKA, and MONTOYA knew or should have reasonably foreseen would  
7 later be furnished by SSA to IRS.

COUNT TWENTY-THREE

[18 U.S.C. §§ 1001(a)(2)]

70. The Grand Jury hereby repeats and realleges paragraphs 1 through 39, 42 through 60, 63 through 64, and 66 of this Indictment.

71. On or about March 31, 2005, in Riverside County, within the Central District of California, and elsewhere, in a matter within the jurisdiction of the executive branch of the government of the United States, specifically the United States Department of Labor, defendant CHARLES ROBERT VANCE knowingly and willfully made a materially false, fictitious, and fraudulent statement and representation, in that VANCE said to a Special Agent of the United States Department of Labor, Office of Inspector General, Office of Labor Racketeering and Fraud Investigations, that he did not authorize the hiring of locked-out workers at Ralphs stores in his Zone during the October 2003 to February 2004 lockout, with the exception of the hiring of VANCE's wife, when, in truth and in fact, as VANCE then well

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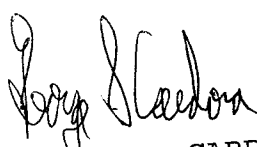
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1 knew, he had authorized Store Directors in his Zone to hire many  
2 locked-out workers, in addition to his wife, under false names  
3 and social security numbers.

4 A TRUE BILL

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6           S            
7 Foreperson  
8  
9

10   
11  
12 GEORGE S. CARDONA  
Acting United States Attorney

13 CHRISTINE C. EWELL  
14 Assistant United States Attorney  
Chief, Criminal Division

15 DOUGLAS A. AXEL  
16 Assistant United States Attorney  
Chief, Major Frauds Section

17 BEONG-SOO KIM  
18 Assistant United States Attorney  
Deputy Chief, Major Frauds Section

19 JEREMY D. MATZ  
20 Assistant United States Attorney  
Major Frauds Section

21 STEPHEN A. CAZARES  
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